उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(25)

मामला क्रमांक Cr.A. No. 141/2001 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT/ ACCUSED (In Jail)	Suderam, S/o Itwari Ram Sahu, aged 25 years, R/o village Gughawa, P.S. Bhilai-3, Tah and Distt. Durg, Chhattisgarh.
		-Versus-
	RESPONDENT	The State of Chhattisgarh

Present :- Shri Anand Kumar Tiwari, counsel for the appellant.
Shri U.N.S. Deo, Addl. Public Prosecutor for the State.

DB: - **HON'BLE SHRI L.C. BHADOO &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

ORAL JUDGMENT
(Delivered on 20th April, 2007)

L.C. Bhadoo, J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 19-12-2000 passed by Fifth Additional Sessions Judge, Durg, in Sessions Trial No.245/2000 whereby he has been held guilty under Section 302 of the Indian Penal Code for committing murders of his wife Shakuntala & daughter Shashikala, and sentenced him to undergo imprisonment for life & to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo imprisonment for one year.

2) The case of the prosecution, in brief, is that Bahoran (PW-1) gave report (Ex.P/13) in the Police Station, Old Bhilai on 17-5-2000 at 2.00 p.m. to the effect that he is a village Panch, yesterday evening at about 7.00 p.m. when he was at his residence, he heard commotion that some incident had

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	taken place in the house of Itwari. He enquired from Itwari, who disclosed that the bodies of his daughter-in-law Shakuntala & grand daughter Shashikala are lying and there is blood on the ground. He also saw that the body of Shakuntala was lying on one cot and the body of Shashikala was lying on another cot. There was blood on the ground. Thereafter he came and sat in the Parchi. At about 8.00 to 8.30 in the night Suderam, son of Itwari, came from outside. In the first instance Itwari, thereafter Bhuvan, enquired from Suderam as to how it has happened, on which, Suderam disclosed that he himself has committed the murder of his wife Shakuntala & daughter Shashikala, because in the afternoon his wife refused to provide food, therefore, he has committed the murder. Receiving this report, First Information Report (Ex.P/12) was registered for commission of offence under Section 302 of the Indian Penal Code. The Investigating Officer left for the scene of occurrence. After giving notice (Ex.P/1) to the Panchas, he prepared inquest on the bodies of Shakuntala & Shashikala under Exs.P/2 & P/3, respectively. While in Police custody, the accused gave memorandum (Ex.P/4), in pursuance of that the Police got recovered the carpenter axe – the weapon of offence, the same was seized under Ex.P/5. Clothes of the accused were seized under Ex.P/6. Blood stained soil, plain soil, one lungi and two Kathris, were seized under Ex.P/7. Site plan (Ex.P/6) was prepared by the Patwari. Merg intimations under Exs.P/10 & P/11 were given by village Kotwar Lachhi Das to Police Station, Old Bhilai. Body of Shakuntala was sent for postmortem under Ex.P/13-A to the Government Hospital, Durg, where Dr. V.K. Sao conducted postmortem and prepared report vide Ex.P/13-A, in which he opined that cause of death was shock and hemorrhage as a result of ante-mortem injuries. The Doctor noticed incised wound on the neck in the	

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size of 2" x 1" x muscle deep, incised wound in the size of 6" x ½" x muscle deep, incised wound on the mandible bone in the size of 1" x ½", incised wound on mandible in the size of ½" x ¼" x muscle deep, incised wound on the back of the neck about 1.5" away from the mastoid bone, the wound was incised in the size of 5" x 3". Incised wound was obliquely placed on the right side of the head. Mastoid bone deep in the size of 5" x 3" and it was extending up to the backbone. There was a fracture in the backbone. Spinal cord was cut, muscles were cut, which were deep up to 2.5" and as a result of which the head could be rotated. The body of Shashikala was sent for postmortem examination to Government Hospital, Durg, under (Ex.P/14) where Dr. V.K. Sao conducted the postmortem and prepared the report (Ex.P/14-A). Doctor opined that the cause of death was shock and hemorrhage as a result of ante mortem injuries. He noticed the incised wound 2" away from the right shoulder up to clavicle in the size of 3" x 2", clavicle bone was fractured, another incised wound on the back side of the neck 2" away from mastoid bone in the size of 2.5" x 2" x bone deep. Food pipe and windpipe were cut, which were full of blood. Fourth bone of the neck was also cut and the head could be rotated.

3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Durg, who in turn committed the case to the Court of Sessions Judge, Durg, from where learned Fifth Additional Sessions Judge, Durg, received the same on transfer for trial.

4) In order to establish the charge against the accused/appellant, the prosecution examined 12 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the

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material appearing against him in the prosecution evidence. He stated that he is innocent and has been falsely implicated in the case. He examined Jeevdhan (DW-1) in his defense.

5) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6) We have heard learned counsel for both the parties.

7) Learned counsel appearing for the accused/appellant has not disputed the homicidal death of Shakuntala & Shashikala. Moreover, Dr. V.K. Sao (PW-10), who conducted the postmortem and prepared the reports (Exs.P/13-A & P/14-A), has categorically stated that the cause of death was shock & hemorrhage, as a result of ante-mortem injuries and the death was homicidal in nature. Accused made extra judicial confession before Bhuvanlal Dewangan (PW-8), therefore, it is established that death of Shakuntala & Shashikala was homicidal in nature.

8) As far as involvement of the accused in the crime in question is concerned, there is no ocular and direct evidence in this case. The case rests on circumstantial evidence i.e.

(i) that the accused made extra judicial confession before Bhuvanlal Dewangan (PW-8).

(ii) that the carpenter axe, weapon of offence, was recovered at the instance of the accused.

(iii) that the bodies of Shakuntala & Shashikala were found in the house of the accused and he has not offered any explanation

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about the circumstances in which the murder of Shakuntala & Shashikala was committed.

9) In order to rest conviction based on the circumstantial evidence, the Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220** held that :

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

10) We have examined and scrutinized the evidence available on record.

11) Learned counsel appearing for the accused/appellant argued that based on the extra judicial confession made before Bhuvanlal Dewangan (PW-8) on the solitary circumstances, accused cannot be convicted. He has also submitted that other witnesses namely, Bahoran (PW-1) and Santosh (PW-2) have not supported the case of the prosecution that the accused made extra judicial confession before them. He also argued that the extra judicial confession made before Bhuvanlal Dewangan (PW-8) is not worth reliable.

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12) It is settled law that conviction can be rest on the extra judicial confession made by the accused provided the same is voluntary, true and inspires confidence of the Court. Bahoran (PW-1) has not supported the case regarding the extra judicial confession made before him by the accused. He has stated that Police came and asked as to who committed the murder, on which, accused/appellant said that he has committed the murder of his wife & daughter. Similarly, Santosh (PW-2) has also stated that accused/appellant made extra judicial confession before the Police regarding the commission of murder of Shakuntala & Shashikala. Therefore, the above evidence regarding the extra judicial confession in presence of the Police is not admissible.

13) But, Bhuvanlal Dewangan (PW-8) has stated that on the fateful day after hearing commotion at about 7.30 p.m. he went to the house of Suderam, he saw that 10-15 persons were sitting there, Bahoran, Santosh, Firtu and others were there, he came to know that the murder of daughter-in-law & her daughter has been committed. They said that Kotwar be called and report be lodged. Therefore, Kotwar alongwith Jeevdhan Sahu and Ramdeo Sahu were sent to Police Station for lodging the report. When Kotwar and other persons reached near Karsa Nala they saw accused Suderam, they brought him in the village, left him at the residence and went back for lodging the report in the Police Station. The Police people reached at about 9.00 – 9.30 p.m. Before that, when the Kotwar left for the Police Station, they enquired from Suderam about the incident, on which, he disclosed that he went to the field, after returning from the field, he took bath, consumed liquor and thereafter he asked his wife to provide food, on which, his wife refused to

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provide food, therefore, he committed the murder of his wife. Thereafter, he (PW-8) did not enquire anything from Suderam. In cross-examination, he has stated that when Kotwar and others left the house of Itwari, one hour thereafter, they came along with Suderam. In the first instance, the father of Suderam enquired from him, thereafter he enquired in front of persons, and the accused made extra judicial confession about the commission of murder of his wife. In his presence, the Police has not enquired anything from Suderam. This witness i.e. Bhuvanlal Dewangan (PW.8) is an independent person and in cross-examination of this witness, defence has not been able to bring any circumstance on record, which discredits the evidence of this witness. Nothing has been brought on record that this witness, on account of any animosity or grudge against the accused, gave this evidence regarding extra judicial confession made by the accused before him at his residence. Immediately after Suderam came, he enquired from him, on which, Suderam made the extra judicial confession. Therefore, the evidence of Bhuvanlal Dewangan (PW-8) inspires confidence of the Court.

14) Merely because Bahoran (PW-1) & Santosh (PW-2) have not supported the case of the prosecution regarding the extra judicial confession made by the accused, the evidence of Bhuvanlal Dewangan (PW-8) cannot be doubted. Moreover, the above extra judicial confession made by the accused before this witness stands corroborated by the medical evidence of Dr. V.K. Sao (PW-10), who has stated that there were incised wounds on neck and other parts of the bodies of Shakuntala & Shashikala.

15) As far as the recovery of carpenter axe – weapon of offence, at the instance of the accused is concerned, Santosh (PW-2) has stated that on

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enquiry by the Police, the accused disclosed that he has kept the carpenter axe in the jute bag, thereafter he brought the carpenter axe and handed over the same to the Police. Memorandum (Ex.P/4) and seizure memo (Ex.P/5) bears his signatures. In para 7, he has stated that the carpenter axe was not clean. There were blood spots on the sharp edge side of the carpenter axe. He has further stated that it is incorrect to say that the carpenter axe was not seized in his presence.

16) Bhuvanlal Dewangan (PW-8) has also stated that the accused gave memorandum (Ex.P/4) and thereafter he brought the carpenter axe and the same was seized under Ex.P/5, Exs.P/4 & P/5 bears his signatures. In para 7 of cross-examination, he has stated that he saw the carpenter axe, handle of the same was 17" in length, axe (iron piece) was 6" in length and it was 2½" or 3" in width. The carpenter axe was stained with blood.

17) B.B.S. Rajput (PW-12), Inspector & Investigating Officer has stated that on 17-5-2000, the accused gave memorandum (Ex.P/4), which bears his signature between 'D' to 'D' regarding the carpenter axe and in pursuance of that, the accused brought the carpenter axe, which was kept below the stair case and the same was stained with blood. He seized the same under Ex.P/5. Therefore, from the above evidence, it is established that the accused gave memorandum (Ex.P/4) regarding the weapon of offence i.e. carpenter axe and the same was seized at the instance of the accused from his residence. It is true that there is no Serologist report regarding the blood and blood group on the carpenter axe, but these witnesses have categorically stated that the carpenter axe was stained with blood and looking to the nature of incised wounds, which were found on the bodies of

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Shakuntala & Shashikala, it is possible to cause such incised wounds from the sharp edge of the carpenter axe.

18) As far as this circumstance is concerned, it is admitted position that the bodies of Shakuntala & Shashikala were found in the house of accused in an injured condition, which is established from the inquest report Exs.P/2 & P/3, which were prepared on the bodies of Shakuntala & Shashikala. These inquest reports were prepared in the presence of Itwari, father of the accused, and the bodies were found in the house of accused. In the statement recorded under Section 313 of the Code of Criminal Procedure, the accused has not stated anything that how the dead bodies were lying in his house and explained the circumstances in which these two murders were committed in his house.

19) Jeevdhan Sahu (DW-1) has stated that on the fateful day he went to the house of Suderam, there people asked him to go to the Police Station with Kotwar for lodging the report about the incident. Therefore, he went to the Police Station with Lachhidas. When they reached near Karsa Nala, the accused met them and on enquiry from Suderam, he said that he had gone to Raipur and he did not disclose anything about the incident. Thereafter they brought Suderam to his house. But, this fact has not been stated by the accused himself in his statement recorded under Section 313 of the Code of Criminal Procedure nor such question has been put to other witnesses. Moreover, accused/appellant made an extra judicial confession before Bhuvanlal Dewangan (PW-8) that on the fateful day he went to the field, after returning from there, he took bath, consumed liquor and asked his wife for providing food, his wife refused to provide food and, therefore, he

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committed the murder of his wife. Therefore, the evidence of Jeevdhan Sahu (DW-1) does not inspire confidence regarding the truthfulness of whatever he has stated.

20) Learned counsel for the accused/appellant placing reliance upon the decision of the Apex Court rendered in the matter of **Balwinder Singh vs. State of Punjab** reported in **AIR 1996 SC 607** argued that merely on the basis of extra judicial confession, the conviction cannot be recorded.

21) The above case is distinguishable on facts, because the Apex Court for the reasons recorded in para 10 of the judgment has not believed the evidence of the witnesses before whom the accused said to have made the extra judicial confession. In that case, the Court held that:

> "The manner in which the extra judicial confession is alleged to have been made and the silence of PW-3 for three days in disclosing the same to the police, even though she had admittedly been with the police between 21st and 23rd March, 1984 renders it unsafe to rely upon her statement. This unexplained long delay in lodging the first information report Ex. PB detracts materially from the reliability of the prosecution case in general and the testimony of PW3 in particular."

22) Therefore, the above circumstances have been established that the accused gave memorandum regarding the weapon of offence – carpenter axe, the same was recovered at his instance, which was stained with blood, the bodies of Shakuntala & Shashikala were lying in an injured condition in his house and the accused has not offered any explanation explaining the circumstances under which they sustained the fatal injuries. The accused made extra judicial confession before Bhuvanial Dewangan (PW-8) and the

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	same is corroborated by the recovery of carpenter axe. Therefore, the chain of circumstances is complete which suggest involvement of the accused in the crime in question. The cumulative effect of all these circumstances discussed above irresistibly establishes that the accused was the author of the crime in question and there was no possibility of coming any other person in committing murder of Shakuntala & Shashikala. 23) For the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the judgment of the trial Court convicting the accused/appellant under Section 302 of the Indian Penal Code. The appeal being devoid of merit liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. BHADOO** **Judge** **Sd/-** **Dhirendra Mishra** **Judge**	